

SUPREME COURT OF NOVA SCOTIA
Citation: *Lynk v Bennett Estate*, 2024 NSSC 66

Date: 20240306
Docket: 514881
Registry: Kentville

Between:

Marchell Lynk

Applicant

v.

Peggy Bennett as Personal Representative
of the Estate of John Grayden Bennett,
Peggy Bennett in her personal capacity, and Ron Bennett

Respondents

Judge: The Honourable Justice Gail L. Gatchalian

Heard: October 24, 2023, in Kentville, Nova Scotia

Final Written Submissions: Applicant, November 15, 2023
Respondent, November 14, 2023

Counsel: Nick Moore, for the Applicant
Peggy Bennett, self-represented
Ron Bennett, not participating

By the Court:

Introduction

[1] The deceased, John Grayden Bennett, married Peggy Bennett in 1992. They separated in 2004. They were never divorced.

[2] After his separation from Peggy Bennett, Mr. Bennett commenced a common-law relationship with Marchell Lynk that lasted over 15 years, from 2004 until his death on April 18, 2020.

[3] Mr. Bennett did not have a will. He did not have any children. His father, Ron Bennett, did not participate in the proceeding. Ms. Bennett obtained a Grant of Administration of the Estate on April 22, 2021.

[4] Ms. Lynk and Mr. Bennett owned a piece of real property as joint tenants, on which their home was situated, which I will refer to as the “Home Parcel,” located at 3661 Highway 358 in Scotts Bay, PID 55310668. Upon Mr. Bennett’s death, Ms. Lynk obtained sole title to the Home Parcel through the right of survivorship.

[5] At the time of his death, Mr. Bennett owned, in his name only, a 25-acre piece of land, which I will refer to as the “Back Parcel,” PID 55001820, behind the

Home Parcel, which can only be accessed from the Home Parcel. The Back Parcel now forms part of the Estate.

[6] At the time of his death, Mr. Bennett was the sole registered owner of a 2010 Jeep Wrangler. After his death, the Estate took possession of the Jeep Wrangler, and sold it for \$3000.

[7] Ms. Lynk has filed a claim against the Estate under s.48(1) of the *Probate Court Practice, Procedure and Forms Regulations*, NS Reg 119/2001 under the *Probate Act*, S.N.S. 2000, c.31. She says that the Estate has been unjustly enriched because it retains the Back Parcel, as well as other personal property of Mr. Bennett, including the Jeep Wrangler.

[8] Ms. Lynk filed an affidavit, as did Ms. Bennett. They were cross-examined on their affidavits.

[9] Ms. Bennett also filed an Affidavit of Tom Mamay, which appears to relate to repairs done to the Jeep Wrangler. It purports to provide estimates for repairs, but does not identify who Mr. Mamay is or what his profession is. It does not identify the owner of the Jeep Wrangler. It contains incomplete sentences. It is not a proper affidavit, and I have not relied on it.

[10] In *Garland v. Consumers' Gas Co.*, 2004 SCC 25, Justice Iacobucci stated the three elements of unjust enrichment as follows:

30 As a general rule, the test for unjust enrichment is well established in Canada. The cause of action has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment. [citations omitted]

[11] Ms. Lynk seeks as a remedy a constructive trust or restitution representing a 50% interest in the Back Parcel, based on the concept of a joint family venture as set out in *Kerr v. Baranow*, 2011 SCC 10.

[12] In order to determine Ms. Lynk's claim, I will consider the following questions:

1. Has Ms. Lynk established an enrichment of the Estate and a corresponding deprivation?
2. If so, has Ms. Lynk established an absence of juristic reason for the enrichment?
3. If so, is Ms. Lynk entitled to a proprietary or a monetary remedy?
4. Should Ms. Lynk's other claims be allowed: (a) reimbursement for funeral expenses, (b) reimbursement for repairs to the Jeep Wrangler, and (c) reimbursement for storage costs for the Jeep Wrangler.

Enrichment/Corresponding Deprivation

[13] I accept the following evidence of Ms. Lynk.

[14] After Mr. Bennett and Ms. Bennett separated, Ms. Lynk and Mr. Bennett purchased the Back Parcel and the Home Parcel. They moved into the house in 2005. They acquired the properties so that they could have a small hobby farm. The tax assessed value of the Back Parcel is \$13,000, and has been described as a “wood lot” at some points in the evidence.

[15] Initially, title to both properties was in Mr. Bennett’s name only. The properties were encumbered by a mortgage, also in Mr. Bennett’s name only. The mortgage payments included the property tax payments for the House Parcel.

[16] The property tax bill for the Back Parcel came in the mail. Either Ms. Lynk or Mr. Bennett paid this bill throughout the years, depending on who had time to go to the municipality’s office to pay it.

[17] Ms. Lynk and Mr. Bennett had a joint bank account, and each had separate bank accounts. The joint account was primarily used to help move their money around and share expenses.

[18] When they first moved in together, they agreed that Mr. Bennett would pay the mortgage payments, which included the property taxes, vehicle payments (at the time, they only had one vehicle that they shared) and the power bill. At the time, Ms. Lynk was not working and was receiving disability benefits. She paid for

the house and vehicle insurance, groceries, the phone bill, both cell phone and landline, cable, internet and other household needs. She also helped pay for gas and maintenance of the vehicle. She would normally pay for meals when they ate out.

[19] Ms. Lynk contributed approximately \$200-\$400 each month to the expenses paid by Mr. Bennett from his bank account. When she was able to work and make a little extra money, she would contribute more.

[20] When they travelled together, which was rare because they had a dog at home, they would pool their money together to help pay for the trip. Their last major trip together was in 2018, when they travelled to Hope, British Columbia to visit Mr. Bennett's father. If there was an extraordinary expense, they would both contribute to it. When she did work and earn extra money, she would contribute more. However, throughout their relationship, Mr. Bennett always earned more than Ms. Lynk.

[21] When they first moved in together, they had a Dodge Ram 1500, then a Chevy Aztec, then a Chrysler Pacifica, and then the Jeep Wrangler in 2010. The Jeep Wrangler was in Mr. Bennett's name only, although they both drove it. Ms. Lynk and Mr. Bennett contributed equally to the cost of maintaining the Jeep

Wrangler. Ms. Lynk bought a soft top for the Jeep Wrangler. They would take the top off and go for drives in the Jeep Wrangler “all the time.” Ms. Lynk drove the Jeep Wrangler more than Mr. Bennett did in the last year that he was alive.

[22] In 2016, when Ms. Lynk was able to work full time again, she bought her own car, a Jeep Compass. However, it was registered in both her name and Mr. Bennett’s name. Later that year, they traded the 2016 Jeep Compass in for a 2016 Jeep Cherokee, which was also registered in both of their names. The 2016 Jeep Compass cost \$35,240.50, and they took out a joint loan in order to buy it.

[23] On August 4, 2016, Mr. Bennett and Ms. Lynk took out a joint RBC consolidation loan in both of their names. The outstanding balance of the Jeep Wrangler was added to the loan.

[24] In 2017, as part of a refinance, the House Parcel was conveyed to Ms. Lynk and Mr. Bennett jointly, and a new mortgage in the amount of \$37,600, encumbering the House Parcel only, was placed in both of their names.

[25] Ms. Lynk had assumed that the Back Parcel had been conveyed to both her and Mr. Bennett as well. She did not discover that the Back Parcel remained in Mr. Bennett’s name only until after his death, when Ms. Bennett recorded the Grant of Administration on the parcel register for the Back Parcel.

[26] At the time Mr. Bennett's death, he owed Financeit Payments approximately \$18,500 in relation to his purchase of a Can Am Commander. After his death, Ms. Lynk paid Financeit \$13,000 to avoid repossession.

[27] Ms. Lynk's credibility was not shaken on cross-examination. Ms. Bennett attempted to challenge Ms. Lynk's evidence that she contributed to certain expenses such as the mortgage. Ms. Bennett showed Ms. Lynk that there were no deposits from Ms. Lynk's bank account to Mr. Bennett's bank account on a bank statement for Mr. Bennett's account that shows transactions from March 27, 2020 to April 16, 2020. Ms. Lynk's explanation, which I accept, was that she did not transfer money directly to Mr. Bennett's account for the purpose of contributing to the joint expenses, but rather to the joint account. It was up to Mr. Bennett to use the money to pay the expenses he was responsible for.

[28] I conclude that the finances of Ms. Lynk and Mr. Bennett were intertwined throughout their relationship; they treated both properties as belonging to both of them; Ms. Lynk contributed \$200-\$400 each month, sometimes more, to expenses paid by Mr. Bennett, which included the first mortgage that encumbered both parcels from 2005 to 2017, and then the second mortgage that was in both of their names; Ms. Lynk also, from time to time, paid the property taxes for the Back Parcel; and they were jointly responsible for family expenses, including vehicle

payments and maintenance, and debts. Ms. Lynk paid a substantial sum, \$13,000, to settle the lien on the Cam Am.

[29] I conclude that there was an enrichment of the Estate and a corresponding deprivation of Ms. Lynk: the Estate obtained sole title to the Back Parcel, free of encumbrances, in part due to the direct financial contributions of Ms. Lynk to the mortgage payments and property taxes, and in part indirectly due to Ms. Lynk's payment of other joint expenses.

Juristic Reason

[30] No established category of juristic reason applies: *Garland* at para.44. The onus is on the Estate to establish a juristic reason based on reasonable expectations or public policy: *Garland* at paras.45-46. The Estate did not argue nor establish such a defence.

[31] There is no juristic reason to allow the Estate to keep the benefit that Ms. Lynk conferred on it.

[32] Ms. Lynk has established that the Estate has been unjustly enriched by its retention of the Back Parcel.

Monetary or Proprietary Remedy

[33] The default remedy for unjust enrichment is a monetary remedy, unless the Ms. Lynk can establish a sufficient link between her contributions and the acquisition, preservation, maintenance or improvement of the Back Parcel: *Kerr v. Baranow* at para.50.

[34] In this case, there is a sufficient link between Ms. Lynk's contributions and the Back Parcel. Ms. Lynk made direct financial contributions to the mortgage payments and property taxes, indirectly financial contributions by her payment of other joint expenses.

[35] Ms. Lynk must also demonstrate that a monetary award would be insufficient in the circumstances. In determining this issue, the court may take into account the probability of recovery, as well as whether there is a reason to grant the claimant the additional rights that flow from recognition of property rights: *Kerr v. Baranow* at para.52. Ms. Lynk has demonstrated that a monetary award would be insufficient in these circumstances.

[36] First, the probability of recovering a monetary remedy from the Estate is low. The Back Parcel is likely worth more than its tax assessed value. It appears from the inventory filed by the Personal Representative over three years ago that the Estate had only \$3,292.76 in a bank account. Apart from the Jeep Wrangler and

the Can Am, which the Estate does not possess, the inventory listed personal effects valued at \$5000 and a Dodge Ram valued at \$3,000.

[37] Second, there is a reason to grant Ms. Lynk the additional rights that flow from the recognition of property rights. For 15 years, Ms. Lynk and Mr. Bennett treated the two properties as belonging to both of them, the two properties are connected, the Back Parcel cannot be accessed except via the Home Parcel, title to the Home Parcel was in the names of both Ms. Lynk and Mr. Bennett, and Ms. Lynk obtained sole title to the Home Parcel through the right of survivorship.

Amount of Property Interest

[38] The extent of the constructive trust interest should be proportionate to the claimant's contributions: where the contributions are unequal, the shares will be unequal: *Kerr v. Baranow* at para.53. The court must assess the contributions made by each spouse and make a fair, equitable distribution having regard to the respective contributions: *ibid*.

[39] There is a lack of accounting evidence in this case. However, what is clear from the evidence is that Ms. Lynk and Mr. Bennett were in a common law relationship and each contributed substantially to their relationship, according to their means, throughout their 15 years together. They lived together, had a dog,

took trips together, drove each other's vehicles and treated the vehicles as belonging to both of them, treated their home and properties as belonging to both of them, and were jointly responsible for their debts. As a result of their joint efforts, the mortgage was removed from the Back Parcel.

[40] It is not possible to come up with an exact calculation of the respective contributions of Ms. Lynk and Mr. Bennett to the Back Parcel. However, as Cromwell J. stated in *Kerr v. Baranow* at para.102, [w]hile determining the proportionate contributions of the parties is not an exact science, it generally does not call for a minute examination of the give and take of daily life," but rather "for the reasoned exercise of judgment in light of all of the evidence." In the circumstances of this case, and given the nature of their 15-year relationship, a just and equitable outcome would be to award Ms. Lynk a 50% interest in the Back Parcel by way of a constructive trust.

Jeep Wrangler

[41] The Jeep Wrangler was in Mr. Bennett's name only, although they both drove it. Both Ms. Lynk and Mr. Bennett contributed equally to the cost of maintaining the Jeep Wrangler. Ms. Lynk bought a soft top for it. The outstanding balance of the Jeep Wrangler was added to an RBC consolidation loan in both of

their names. Ms. Lynk's paid for repairs to the Jeep Wrangler after Mr. Bennett's death in the amount of \$2020.84.

[42] Ms. Lynk has established that her financial contributions to the Jeep Wrangler payments and maintenance, as well as the soft top, meet the test for an enrichment and a corresponding deprivation.

[43] No established category of juristic reason applies: *Garland* at para.44. The onus is on the Estate to establish a juristic reason based on reasonable expectations or public policy: *Garland* at paras.45-46. The Estate did not argue nor establish such a defence.

[44] Ms. Lynk has established that the Estate was unjustly enriched by taking title to the Jeep Wrangler and then retaining the sale proceeds.

[45] A monetary remedy is appropriate. Given Ms. Lynk's contributions to the vehicle payments, vehicle insurance, vehicle maintenance, and then repairs, it would be just to award Ms. Lynk 50% of the sale proceeds, or \$1500, as a remedy.

Other Claims

[46] Ms. Lynk's claim for reimbursement in the amount of \$2500 that she initially said she paid for funeral expenses is denied. The evidence was that the funeral expenses were paid with Estate funds.

[47] Ms. Lynk's claim for reimbursement in the amount of \$2000 that she said she incurred to store the Jeep Wrangler is denied. There is no evidence justifying this cost.

[48] Ms. Lynk's claim for reimbursement for repairs she made to the Jeep Wrangler after Mr. Bennett's death in the amount of \$2020.84 is allowed in part. Ms. Bennett did not challenge the amount charged for these repairs or the need for these repairs. The Estate must reimburse Ms. Lynk \$1,010.42, representing half of the cost of the repairs.

Conclusion

[49] The Estate has been unjustly enriched by the transfer to it of title to the Back Parcel and its retention of the proceeds from the sale of the Jeep Wrangler.

[50] Ms. Lynk shall have a 50% interest in the Back Parcel by way of a constructive trust.

[51] The Estate shall also pay Ms. Lynk \$1500, representing half of the proceeds of the sale of the Jeep Wrangler, and \$1010.42, representing half of the repair costs paid for by Ms. Lynk, for a total of \$2,510.42.

[52] If the parties cannot agree on the issue of costs, I will receive written submissions from them within two weeks of this decision.

Gatchalian, J.